

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

KEITH B. MARX,

Plaintiff,

v.

INTEGRATED DEVICE TECHNOLOGY,  
INC.

Defendant.

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CIVIL ACTION NO. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY JUDGMENT**

Keith B. Marx, plaintiff, brings this action for declaratory judgment to resolve competing claims to an invention.

**I. Parties, Jurisdiction and Venue**

1. Keith B. Marx is an individual residing in Richardson, Texas and a citizen of the State of Texas.

2. Integrated Device Technology, Inc. ("IDT") is a corporation formed under the laws of the State of California. IDT maintains its principal corporate offices and headquarters in San Jose, California, and a citizen of the State of California.

3. The amount in controversy exceeds the sum of \$75,000.00 exclusive of interests and costs. The District Court has original subject matter jurisdiction of this action under 28 USC 1332.

4. This Court has personal jurisdiction over IDT because IDT conducts business in the State of Texas and within this district, including contracts with Texas

corporations and direct sale of its products in Texas. IDT maintains a registered agent for service and can be served with summons, acknowledgement, and a copy of this complaint through its registered agent for service, CT CORP. SYSTEM, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-4234.

5. Venue is proper in the Northern District of Texas under 28 U.S.C.A. 1391.

## **II. Background**

1. Marx commenced employment at IDT in 1992 and has worked for the company as a Field Applications Engineer continuously since that time. As Field Applications Engineer or ("FAE"), Marx provided technical support to IDT's sales force and interfaced with IDT's customers on technical issues concerning IDT's products which are primarily micro processors. Marx is not a design engineer and has never worked or served IDT in a design, research or product development capacity.

2. Marx signed an employment agreement when he commenced work which addresses claims of ownership to creative or intellectual property developed during employment. A complete copy of Marx's employment agreement is attached to this complaint.

3. Marx conceived a new system partitioning concept for Portable Digital Devices, monitors, and televisions (hereinafter the "invention" or "device"). The invention derives potential economic value, is not generally known to the public, and is not currently manufactured or sold in the consumer electronics industry. The invention is described and detailed in drawings as part of an application for a provisional patent filed which Marx has filed with the United States Patent Office.

4. Marx developed the invention entirely on his own time.

5. Marx developed the invention without use of IDT's equipment, supplies, facilities or trade secrets.

6. The invention does not relate to IDT's business as a semiconductor component supplier and does not relate to IDT's actual or anticipated research or development.

7. The invention is not the result of any work Marx performed for IDT nor does the invention draw upon or borrow from products or technologies marketed or developed by IDT.

8. Believing the device unrelated to IDT's business and therefore exempt from preemptive assignment under the employment agreement, Marx disclosed the invention to IDT's Director of Intellectual Property, Mr. Greg T Warder. Initially, Warder indicated that he did not believe the invention was related to IDT's business. But later, Warder communicated IDT's refusal to waive or relinquish ownership to the invention. Thereafter, IDT communicated written demands repeatedly that Marx assign all rights relating to the device and the provisional patent application.

9. IDT fired Marx on September 10, 2010 because he refused to agree to IDT's interpretation of the employment agreement or otherwise concede IDT's preemptive claim of ownership to the invention.

### **III. Count One: Declaratory Judgment**

1. The employment agreement incorporates California Labor Code Section 2870 which limits an employer's rights to contractually claim ownership of an employee's intellectual property:

"2870: Any provision in an employment agreement which provides that an employee shall assign or offer to assign any of his or her rights in an invention to his or her employer shall not apply to an invention for which no equipment, supplies, facility, or trade secret information of the employer was used and which was developed entirely on the employee's own time, and (a) which does not relate, (1) to the business of the employer or (2) to the employer's actual or demonstrably anticipated research or development, or (b) which does not result from any work performed by the employee for the employer. Any provision which purports to apply to such an invention is to that extent against the public policy of this state and is to that extent void and unenforceable."

2. An actual case and controversy has arisen between Marx and IDT concerning whether IDT may contract for ownership of this invention. The invention is the subject of applications for provisional patents currently on file with the United States Patent Office. IDT has ordered Marx to cease and desist from pursuing a provisional patent. IDT has demanded that Marx assign and transfer control of any patent applications to IDT. IDT has asserted exclusive ownership and has threatened litigation if Marx refuses to assign ownership rights to the device.

3. IDT's asserted ownership clouds plaintiff's rights to seek statutory protection of the technology under United States patent laws, fosters uncertainty over prospects of future damages, and impedes effort to pursue venture capital.

4. An actual, present and justifiable controversy has arisen between Marx and IDT over ownership of the invention. Marx therefore requests that the court declare the rights and legal relationship between Marx and IDT to the invention and that the court enter declaratory judgment that the device falls within the limitations specified in California Labor Code Section 2870 such that IDT's ownership claim is invalid.

**Prayer for Relief**

WHEREFORE, Keith B. Marx respectfully requests that the Court:

- enter judgment according to the declaratory relief sought;
- award plaintiff his costs in this action; and
- enter all other relief to which plaintiff may be entitled as a matter of law or equity, or which the Court determines to be just and proper.

**Demand for Jury Trial**

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff demands a jury trial on all issues so triable.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

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By: /s/ Richard M. Mosher  
Richard M. Mosher  
State Bar No. 14580300

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Twenty-Fifth Floor  
Dallas, Texas 75201-2832  
Telephone: (214) 871-8269  
Telecopy: (214) 871-8209

**ATTORNEY FOR PLAINTIFF KEITH B.  
MARX**

JS 44 (TXND Rev. 2/10)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the court docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**  
Keith B. Marx**DEFENDANTS**  
Integrated Device Technology, Inc.(b) County of Residence of First Listed Plaintiff Dallas  
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant Santa Clara  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)  
Richard M. Mosher, Thompson, Coe, Cousins & Irons, LLP, 700 N. Pearl Street, Suite 2500, Dallas, TX 75201; (214) 871-8269Attorneys (If Known)  
Roberta A. Hayashi, Berliner Cohen, Ten Almaden Blvd., Eleventh Floor, San Jose, California 95113; (408) 286-5800**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity. (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USCA 1332 jd

Brief description of cause:

Declaratory judgment to determine ownership of invention**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) (See instructions) PENDING OR CLOSED:**

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE  
10/22/2010SIGNATURE OF ATTORNEY OF RECORD  
/s/ Richard M. Mosher

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_